

**TRANSMITTAL OF APPEAL BRIEF (Large Entity)**Docket No.
US000251 (17058)In Re Application Of: **Larry J. Eshelman, et al.**

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
09/686,831	October 11, 2000	Bui, Kieu-Oanh T.	23389	2611	5772

Invention: **VIRTUAL CREATURE DISPLAYED ON A TELEVISION****COMMISSIONER FOR PATENTS:**

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on

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Dated: September 21, 2004

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APPEAL BRIEF

Applicant: Larry J. Eshelman et al.
For: VIRTUAL CREATURE DISPLAYED ON A TELEVISION
Application No.: 09/686,831
Filed: October 11, 2000
Examiner: Bui, Kieu-Oanh T.
Art Unit: 2611

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

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BRIEF ON APPEAL

Sir:

INTRODUCTION

Pursuant to the provisions of 35 U.S.C. §134 and 37 C.F.R. §§ 1.191 and 1.192, this paper is submitted as a brief setting forth the authorities and arguments upon which Appellant relies in response to the Final Rejection of Claims 1-23 in the above-identified patent application on May 7, 2004.

This brief is being filed with a check for the fee of \$330 under 37 C.F.R. §1.17(c). This brief is being filed within two months of the date the Notice of Appeal was received by the Office. Accordingly, no late fee or request for extension of time is needed.

I. REAL PARTY IN INTEREST

The real party of interest in the above-identified patent application is Philips Electronics North America Corporation, New York, NY.

II. RELATED APPEALS AND INTERFERENCES

Appellant respectfully submits that no other appeals are known to applicants, the applicants' legal representative, or assignee that will directly affect or be directly affected by, or have a bearing on, the Board's decision in the pending appeal.

III. STATUS OF THE CLAIMS

Claims 1-23 are pending and appealed. Each of these claims is rejected. Claims 1, 10 and 15 are independent claims.

IV. STATUS OF THE AMENDMENTS

Following the Final Rejection of May 7, 2004, Applicants filed remark, but no amended claims, in an after-final Response under 37 C.F.R. §1.116 on June 3, 2004. An Advisory Action was mailed on July 26, 2004 stating that the request for reconsideration has been considered but does not place the application in condition for allowance. Therefore, there are no un-entered amendments.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The present invention relates to providing, on a display such as a television, an animated viewing companion that acts as a companion to a human viewer that is watching a program on the display. In one aspect, the animated viewing companion responds to events in the program. In another aspect, the animated viewing companion responds to a stored profile of previously made program selections.

In short, Claim 1 provides a method of providing an animated viewing companion on a display. An animated character is generated on a portion of a display as the animated viewing companion. The animated character is controlled to respond to a predetermined audio and/or video event that has been detected in a program being watched.

In further detail, the method includes providing an animated viewing companion 24 on a display (first region 22) while a viewer is watching a program (Fig. 2, p.6, lines 13-22). The method includes displaying a video program on the display 22 (p.6, lines 13-22). The method

further includes generating an animated character 24 on a portion 26 of the display 22 as the animated viewing companion (Fig. 2, p.6, lines 13-22). A virtual creature generator 10 (Fig. 1, p.5, lines 18-20) may be used to generate the animated character 24. Fig. 3 shows further details of the virtual creature generator (VCG) 10 of Fig. 1 (p.7, lines 12 and 13). The method further includes monitoring at least one signal corresponding to the program being watched. For example, the video recognition block 31 (Fig. 3) may monitor the video input signal of the program being watched (p.9, lines 14-20), and/or the audio recognition block 32 (Fig. 3) may monitor the audio input signal of the program being watched (p.11, lines 16-21).

The method further includes determining, based on the monitoring performed in the monitoring step, when a first predetermined event has occurred. For example, the video recognition block 31 may detect characteristics of the video signal that correspond to a desired predetermined event using machine classification or neural network based techniques (p.9, lines 20-29). The predetermined event may be, e.g., a scene change, text or faces in the video image, or a scene with water (p.10, lines 1-21). The audio recognition block 32 may detect, e.g., a sudden loud noise or a human scream (p.11, line 29 – p.12, line 9). The first predetermined event comprises at least one of an audio and video event, as mentioned above, in the program being watched. The method further includes controlling the animated character based on the determination made in the determining step so that the animated character responds to the at least one of an audio and video event in the program being watched. For example, when a scene change from a dark to a bright scene is detected, the virtual creature 24 may be animated to give the appearance of putting on sunglasses (p.10, lines 12-15). When a loud noise is detected, the virtual creature 24 may be animated to give the impression of looking surprised and jumping back (p.11, line 29 – p.12, line 6). Generally, the virtual creature can react to scary, happy and funny events in the program being watched with an appropriate animation (Fig. 4, p.14, line 26 - p.16, line 7).

Claim 10 is similar to claim 1 but adds the feature that the audio and video components are synchronized (p.4, lines 1-5).

In short, Claim 15 provides a method of providing an animated viewing companion on a display while a viewer interfaces with a program recommendation system. A program

selection of a user is compared to a stored profile, where the stored profile is based on previously made program selections. The animated viewing companion is controlled based on the comparison.

In further detail, the method includes providing an animated character on a display while a viewer interfaces with a program recommendation system. The animated character is the animated viewing companion 24 that is provided on the display (first region 22) while a viewer interfaces with a program recommendation system 18 (Fig. 1, p.6, lines 8-12). Generally, program recommendation systems obtain and track information about which shows the viewer likes to watch (p.16, lines 8 and 9). The method includes generating an animated character 24 on the display 22 as the animated viewing companion (Fig. 2, p.6, lines 13-22). The method further includes accepting a selection of a program from a user. See “inputs from user” in Fig. 1. See also p.16, lines 8-22. The method further includes comparing the selection accepted in the accepting step to a stored profile (p.16, lines 11-14). The stored profile is based on previously made program selections (p.16, line 29 – p.17, line 1). The method further includes controlling the animated character based on the comparison made in the comparing step. For example, as indicated in Fig. 5, and at p.16, line 23 – p.17, lines 13, when a new program selection is generally consistent with the selection history (stored profile), the animated character is controlled to provide a happy animation (e.g., a smile). When the new selection is inconsistent with the selection history (stored profile), the animated character is controlled to provide a surprised animation (e.g., fainting). When the new selection is very consistent with the selection history (stored profile), the animated character is controlled to provide an extremely happy animation (e.g., jumping for joy).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

(a) Claims 1-8, 10-13 and 15-19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. patent 6,513,160 to Dureau in view of U.S. patent 6,184,937 to Williams et al. Applicants note that the Office Action did not state that claims 12 and 13 were included in the rejection, but the Examiner’s subsequent arguments indicate they were to be included.

(b) Claims 9, 14 and 20-23 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. patent 6,513,160 to Dureau in view of U.S. patent 6,184,937 to Williams et al. (Williams) and U.S. patent 5,393,073 to Best.

VII. ARGUMENT

(a) The rejection of Claims 1-8, 10-13 and 15-19 under 35 U.S.C. §103(a) as being unpatentable over U.S. patent 6,513,160 to Dureau in view of U.S. patent 6,184,937 to Williams et al. (Williams) is improper.

Claims 1 and 10

Dureau describes a system for promoting viewer interaction by providing a genie that encourages the viewer to participate in lotteries, promotions and the like. The genie appears to be healthy and smiling or unhealthy and frowning depending on the time the viewer spends watching an associated program and/or the interactivity of the viewer with the program (Abstract, col. 6, lines 40-45 and 52-56). To achieve this, an interactive application is time-multiplexed with the television program and transmitted to a set-top box (col. 2, lines 63-67).

Regarding claim 1, the Examiner acknowledges (May 7, 2004 Office Action, p.3) that Dureau does not mention controlling an animated character based on a determination that a first predetermined event comprising at least one of an audio and video event in the program being watched has occurred. However, the Examiner asserts that it would be obvious to modify Dureau's system with Williams's technique of having an animated character that responds or reacts to some predetermined audio event from a broadcast program. Applicants respectfully disagree with this assertion.

First of all, in contrast to Applicants' invention, Williams is not concerned with generating an animated character on a portion of a display as an animated viewing companion, where the animated viewing companion is provided on a display while a viewer is watching a program. Thus, with Applicants' invention, the animated character is distinct from the program being viewed because it is a companion to the program, not part of the program. In contrast, Williams states:

“Making an inserted indicia appear as if it is actually part of the original video scene is an important aspect of the technology.” (col. 2, lines 30-32).
and

“Insertion processor 46 (FIG. 1) takes key 32 and a logo image 26 and places logo image 26 into the live video 28 so that logo image 28 looks as if it is part of the original scene.” (col. 3, lines 65-67).

For example, with the Williams approach, an animated team mascot can be inserted into a stadium to create the illusion that the mascot is actually in the stadium and encouraging the fans to cheer (col. 2, lines 45-52). Such an animated character is therefore part of a program being watched, and not an animated viewing companion.

Accordingly, the combination of Dureau and Williams, if made, *arguendo*, would only result in a system where Dureau’s genie character is inserted into a video program as part of the original video scene, not as a viewing companion. Moreover, it would not be obvious to modify Dureau as asserted by the Examiner. Generally, to establish *prima facie* obviousness, there must be some suggestion or motivation to modify a reference. *See, In re Rouffet*, 149 F.3d 1350, 1355, 47 USPQ2d 1453, 1457 (Fed. Cir. 1998). “Rarely, however, will the skill in the art component operate to supply missing knowledge or prior art to reach an obviousness judgment.” *Al-Site Corp. v. VSI International Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999).

The Examiner asserts that it would be obvious to modify Dureau’s system with Williams’s technique of having an animated character that responds or reacts to some predetermined audio event from a broadcast program, and that the motivation for doing so is to provide an interesting and interactive character appear as if it was part of an original video scene, and because it is an important aspect of the Williams video technology. However, Dureau states that its genie character is intended to “increase the likelihood that viewers in the targeted demographic groups will watch television programs and/or advertisements and participate in associated promotions” (col. 2, lines 56-59), and that the genie is “associated with a particular channel or program” (col. 2, line 30). Clearly, there is no intention of having the genie become part of the original video program. Thus, Dureau only teaches away from the combination suggested by the Examiner. Williams is concerned with the opposite case of

having an animated character appear as part of a program being watched. A person of ordinary skill in the art would therefore not be led to combine these disparate and conflicting concepts. Moreover, the supposed motivation to provide an interesting and interactive character could be achieved in various other ways.

Accordingly, the rejection of claim 1 and the analogous claim 10 is in error.

Claim 15

Independent claim 15 sets forth controlling an animated character based on a comparison between a selected program and a stored profile of previously made program selections. In contrast, Dureau only looks at a data file of viewing information to determine an elapsed time since a given program was last viewed (column 6, lines 56-65). Dureau compares the current date with the last viewing date of an “associated program or channel”, and then compares the elapsed time with a predetermined value or range of values, e.g., to adjust a health of the genie (col. 6, line 52 to col. 7, line 5). However, this does not involve making a comparison between a selected program and a stored profile of previously made program selections as claimed by Applicants. Instead, as mentioned, the genie is already associated with a particular program or channel, so the only determination that is needed for controlling the genie is the last time that the particular program or channel was viewed. For example, Dureau states at col. 7, lines 6-7:

“The interactive application is associated with a particular television program and is intended to increase the viewership of that program.”

In contrast, Applicants’ approach is more sophisticated in that a comparison is made between a selected program and a stored profile that is based on previously made program selections, i.e., multiple program selections rather than a particular predefined program, and the animated character is controlled in response to this comparison.

The Examiner has not indicated how the combination of Dureau and Williams applies to claim 15. Accordingly, the Examiner apparently asserts that claim 15 is anticipated by Dureau. In any case, it should be sufficient to note that Williams provides no disclosure or suggestion of controlling an animated character in response to a comparison made between a

selected program and a stored profile. Moreover, the proposed combination of Dureau and Williams is inappropriate, as discussed above in connection with Claims 1 and 10.

Accordingly, the rejection of claim 15 is in error.

Claim 17

Claim 17 sets forth determining a degree of consistency between a selected program and a stored profile, and generating one of a plurality of approval responses depending on the degree of consistency. Dureau fails to disclose or suggest this feature. As mentioned, Dureau only determines whether the viewer is watching the particular program or channel that is associated with the genie, and does not compare a selected program with a stored profile, much less determine a degree of consistency between a selected program and a stored profile.

Regarding the passages cited by the Examiner, col. 6, line 52 to col. 7, line 5 of Dureau refers to adjusting the health of the genie based on the elapsed time since an associated program or channel was last viewed, col. 7, lines 35-43 refers to setting a health index of the genie based on the amount of time the viewer spends watching the associated television program, or providing the genie with “special powers” based on viewer interactions with advertising promotions, and col. 8, lines 1-28 refers to adjusting the health of the genie based on the elapsed time since an associated program or channel was last viewed, or based on required inputs from the viewer, such as button presses. These passages therefore do not relate to determining a degree of consistency between a selected program and a stored profile as claimed by Applicants.

The Examiner has not indicated how the combination of Dureau and Williams applies to claim 17. Accordingly, the Examiner apparently asserts that claim 17 is anticipated by Dureau. In any case, it should be sufficient to note that Williams provides no disclosure or suggestion of determining a degree of consistency between a selected program and a stored profile. Moreover, the proposed combination of Dureau and Williams is inappropriate, as discussed above in connection with Claims 1 and 10.

Accordingly, the rejection of claim 17 is in error.

(b) The rejection of Claims 9, 14 and 20-23 under 35 U.S.C. §103(a) as being unpatentable over U.S. patent 6,513,160 to Dureau in view of U.S. patent 6,184,937 to Williams et al. (Williams) and U.S. patent 5,393,073 to Best is improper.

Claims 20 and 22:

Claims 20 and 22 set forth that an animated character is controlled to transition from a normal TV-watching animation to one of a plurality of other animations. In the normal TV-watching animation, the animated character appears to be watching the same program as the viewer. See Applicants' specification, state S1 in Fig. 4, and page 15, lines 6-10. Further to the arguments above regarding Dureau and Williams, Best discloses a talking video game showing animated characters that simulate a voice dialog with the viewer. As the game is played, the characters talk to the human viewer and wait for a response via a hand-held controller. Based on the viewer's selection, the scene branches to a corresponding scene. (Abstract, Fig. 1).

The Examiner's comments are not completely clear in this regard, but the Examiner apparently asserts (Office Action, p.10, top) that Best teaches this limitation because Best shows a simulation game where animated characters in the game can assume a normal TV-watching position and other positions. However, these animated characters, e.g., the cartoon children depicted in Figs. 1-7 and 10 of Best, are not animated characters as defined by Applicant. Claim 1, from which claim 20 depends, defines the animated character as an animated viewing companion, e.g., a companion to a viewer while watching a program. Best's animated characters are not viewing companions because they are part of the viewed content itself. Accordingly, Best's animated characters cannot assume a normal TV-watching animation as claimed because they are part of the program itself.

Moreover, there is no motivation to combine Best with Dureau and Williams because they are directed to different technical problems. Best is concerned with a video game rather than with the type of animated character provided by Dureau and Williams. The Examiner

asserts (Office Action, p.9) that Best is in the same field of controlling animated characters as is Dureau and Williams. However, a distinction must be made between the field of cartoon animations in general, which has existed for decades, and the relatively new techniques which have been developed for enhancing existing television programs by adding animated characters. Only with the hindsight of Applicants' invention could the proposed combination be made. Moreover, as discussed, even if such a combination were attempted, it still would not result in a method that discloses or suggests the claimed invention.

Accordingly, the rejection of claims 20 and 22 is in error.

CONCLUSION

In view of the above, the references applied against Claims 1-23 do not render those claims obvious under 35 U.S.C. §103(a). Accordingly, Applicant respectfully submits that the rejections are in error and must be reversed.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment in connection herewith to Deposit Account No. 19-1013/SSMP.

Respectfully submitted,



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VIII. CLAIMS APPENDIX

CLAIMS ON APPEAL: CLAIMS 1-23

Application Serial No. 09/686,831

1. A method of providing an animated viewing companion on a display while a viewer is watching a program, the method comprising the steps of:
 - displaying a video program on the display;
 - generating an animated character on a portion of the display as the animated viewing companion;
 - monitoring at least one signal corresponding to the program being watched;
 - determining, based on the monitoring performed in the monitoring step, when a first predetermined event has occurred;
 - wherein the first predetermined event comprises at least one of an audio and video event in the program being watched; and
 - controlling the animated character based on the determination made in the determining step so that the animated character responds to the at least one of an audio and video event in the program being watched.
2. The method of claim 1, further comprising the step of:
 - determining, based on the monitoring performed in the monitoring step, when a second predetermined event has occurred,
 - wherein, in the controlling step, control of the animated character is also based on the determination that the second predetermined event has occurred.
3. The method of claim 1, wherein, in the displaying step, the video program is displayed in a first predetermined region of the display, and wherein, in the generating step, the animated character is generated in a second predetermined region of the display.

4. The method of claim 1, wherein the at least one signal monitored in the monitoring step comprises an audio signal.
5. The method of claim 1, wherein the at least one signal monitored in the monitoring step comprises an audio signal and a video signal.
6. The method of claim 1, wherein the at least one signal monitored in the monitoring step comprises a video signal.
7. The method of claim 1, further comprising the steps of:
accepting at least one input from the user; and
controlling the animated character based on the inputs accepted in the accepting step.
8. The method of claim 1, wherein a behavior of the animated character depends on a cumulative history of inputs accepted from the user.
9. The method of claim 1, wherein the animated character generated in the generating step has its back facing the viewer, and
wherein the controlling step controls the animated character so that the animated character responds to the at least one of an audio and video event in the program being watched by turning the animated character so that its face faces the viewer.
10. A method of providing an animated viewing companion on a display while a viewer is watching a program, the program having an audio component and a synchronized video component, the method comprising the steps of:
displaying the video component of the program on the display;
generating an animated character on a portion of the display as the animated viewing companion;

determining, based on a signal corresponding to at least one of the audio and video components in the program being watched , when a first predetermined event has occurred; and

controlling the animated character based on the determination made in the determining step so that the animated character responds to the at least one of an audio and video event in the program being watched.

11 The method of claim 10, wherein the signal corresponding to the audio component of the program is an analog signal.

12. The method of claim 10, wherein the first predetermined audio event comprises a sudden loud sound, and

wherein, based on the determination of when the first predetermined audio event has occurred, the animated character is controlled, in the controlling step, to act surprised.

13. The method of claim 10, wherein the first predetermined audio event comprises a laughing sound, and

wherein, based on the determination of when the first predetermined audio event has occurred, the animated character is controlled, in the controlling step, to laugh.

14. The method of claim 10, wherein the animated character generated in the generating step has its back facing the viewer, and

wherein the controlling step comprises the step of turning the animated character so that its face faces the viewer.

15. A method of providing an animated character on a display while a viewer interfaces with a program recommendation system, the method comprising the steps of:
generating an animated character on the display as an animated viewing companion;
accepting a selection of a program from a user;

comparing the selection accepted in the accepting step to a stored profile, wherein the stored profile is based on previously made program selections; and

controlling the animated character based on the comparison made in the comparing step.

16. The method of claim 15, wherein the comparing step comprises the step of determining whether the selection accepted in the accepting step is consistent with the stored profile; and

wherein, in the controlling step, the animated character is controlled to generate an approval response when it is determined, in the determining step, that the selection is consistent with the stored profile.

17. The method of claim 16, wherein, a degree of consistency of the selection with the stored profile is determined in the determining step; and

wherein, in the controlling step, the animated character is controlled to generate one of a plurality of approval responses indicating different degrees of approval depending on the degree of consistency of the selection with the stored profile.

18. The method of claim 16, wherein the comparing step comprises the step of determining whether the selection accepted in the accepting step is inconsistent with the stored profile; and

wherein, in the controlling step, the animated character is controlled to generate a disapproval response when it is determined, in the determining step, that the selection is inconsistent with the stored profile.

19. The method of claim 15, wherein the comparing step comprises the step of determining whether the selection accepted in the accepting step is inconsistent with the stored profile; and

wherein, in the controlling step, the animated character is controlled to generate a disapproval response when it is determined, in the determining step, that the selection is inconsistent with the stored profile.

20. The method of claim 1, wherein:

the controlling step comprises controlling the animated character to transition from a normal TV-watching animation to one of a plurality of other animations when the determining step determines that the first predetermined event has occurred in the program being watched.

21. The method of claim 20, wherein:

the plurality of other animations includes a frightened animation, a happy animation, and a laughing animation.

22. The method of claim 10, wherein:

the controlling step comprises controlling the animated character to transition from a normal TV-watching animation to one of a plurality of other animations when the determining step determines that the first predetermined event has occurred in the program being watched.

23. The method of claim 22, wherein:

the plurality of other animations includes a frightened animation, a happy animation, and a laughing animation.